



**Texas Department of Insurance**

**Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48  
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645  
518-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

**MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

**GENERAL INFORMATION**

**Requestor Name and Address**

MEDI-PLUS PHARMACY  
PO BOX 546  
BARKER TX 77413-0546

**Carrier's Austin Representative Box**

Box Number: 15

**Respondent Name**

INDEMNITY INSURANCE CO

**MFDR Date Received**

MAY 3, 2013

**MFDR Tracking Number**

M4-13-2250-01

**REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Traveler's Insurance/Healthsystems (sic) has not provided any documentation to date to show how it determined AWP or how it determined fair and reasonable. Division Rule 134.503 provides that the MAR is the lesser of the provider's usual and customary charge or the amount determined by a formula provided in 134.503(a)(2)."

**Amount in Dispute:** \$466.38

**RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "The Provider alleges entitlement to additional reimbursement based on the Average Wholesale Price (AWP) data from First Databank. As noted by Margaret Perez I the e-mail attached to the Request for Medical Fee Dispute Resolution as Exhibit J, there are also other sources for AWP information. In fact, the Carrier utilizes Medispan's AWP data in the calculation of the pharmaceutical reimbursement. The Carrier disagrees with the AWP base rate as documented by the Provider in their Request for Medical Fee Dispute Resolution as to reimbursement for the prescriptions at issue. Based on the Carrier's review, the Medispan AWP differs from the AWP the Provider submits from First Databank. This difference accounts for the difference in the Carrier's reimbursement versus the Provider's request for additional reimbursement. As the Rule provides for the lesser reimbursement based on the calculation utilizing any AWP, not a specific reference, the Carrier contends the Provider is not entitled to additional reimbursement."

**Response Submitted by:** Constitution State Services, PO Box 163201, Austin, TX 78716

**SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 23, 2012	ONDANSETRON HCL 8 MG TABLET	\$466.38	\$0.00

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 Texas Register 3954 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.503, effective October 23, 2011, sets out the reimbursement for the pharmaceutical services in dispute.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - W1 – Workers Compensation State Fee Schedule Adjustment.
  - 18 – Duplicate Claim/Service.

### **Issues**

1. How is reimbursement established for the service(s) in dispute?
2. Did the requestor support its request for additional reimbursement?

### **Findings**

1. Reimbursement for the service in dispute may be established by applying 28 Texas Administrative Code §134.503, effective from October 23, 2011, which states, in pertinent part:
  - (a) Applicability of this section is as follows:
    - (1) This section applies to the reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (relating to Definitions) for outpatient use in the Texas workers' compensation system, which includes claims:
      - (A) subject to a certified workers' compensation health care network as defined in §134.500 of this title;
      - (B) not subject to a certified workers' compensation health care network; and
      - (C) Subject to Labor Code §504.053(b)(2).
    - (2) This section does not apply to parenteral drugs.
  - (b) For coding, billing, reporting, and reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants shall apply the provisions of Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits—Guidelines for Medical Services, Charges, and payments, respectively).
  - (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescriptions drugs the lesser of:
    - (1) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed.
      - (A) Generic drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
      - (B) Brand name drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
      - (C) When compounding, a single compound fee of \$15 per prescription shall be added to the calculated total for either paragraph (a)(A) or (B) of this subsection; or
    - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
      - (A) health care provider;

Review of the explanation of benefits, position statements, and other documentation provided by the parties finds that: (1) no contract exists between the parties; and that (2) there are no denial codes or assertions refuting that the amount charged is the usual and customary amount. Consequently, the MAR in this medical fee dispute is established by determining the lesser of the charged amount and the AWP formula pursuant to 28 Texas Administrative Code §134.503(c)(1).

2. 28 Texas Administrative Code §134.503(c)(1) (effective October 23, 2011) states, in pertinent part, that “The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed.”

The Pharmacy Fee Guideline establishes that the Division expects AWP prices to be updated daily. Because the requestor has the burden of proof in this medical fee dispute, it must provide evidence to support that any asserted AWP values used to calculate reimbursement pursuant to §134.503(c)(1) were in effect on the day the disputed drug was dispensed. A mere assertion of the rate in effect on the day that the drug is dispensed is not sufficient.

3. The pharmaceutical in dispute was dispensed on January 5, 2012. After thorough review of the information and documentation provided by the parties, the Division finds:
- The respondent did not provide any evidence to support the asserted AWP price or effective date.
  - In order to refute the carrier’s payment in this medical fee dispute, the requestor alleged that a Rx30 Pharmacy System AWP pricing of 49.748 per unit for ONDANSETRON HCL 8 MG TABLET, 45 count, NDC 45963053930, should be used as a basis for additional reimbursement. The requestor provided evidence to support the asserted RX30 Pharmacy System AWP price and effective date. The Division’s AWP database shows an AWP of 41.45667, dated August 29, 2011. The formula is as follows:  
$$41.45667 \times 45 \times 1.25 + \$4.00 = \$2,335.94$$

The total MAR for the services in dispute is \$2,335.94. The respondent paid a total of \$2,335.94; for that reason, the Division concludes that the requestor has failed to prove it is entitled to additional reimbursement.

**Conclusion**

For the reasons stated above, the division finds that the requestor has failed to support its request for additional reimbursement. As a result, the amount ordered is zero.

**ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §§413.031 and 413.019 (if applicable), the division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

February 28, 2014  
\_\_\_\_\_  
Date

**YOUR RIGHT TO REQUEST AN APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**